

FILED

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

KEVIN D. MILLER

v.

ACCOUNT MANAGEMENT SERVICES *et al.*

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No. 07 C 231

Judge Lozano

Magistrate Judge Cosbey

2009 JAN 30 PM 1:38
STEPHEN M. LUDWIG, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

**THIRD MOTION FOR DEFAULT JUDGMENT AGAINST ASSET PARTNERS OF
WESTERN NEW YORK, LLC (formerly ACCOUNT MANAGEMENT SERVICES,
LLC) and REQUEST FOR HEARING ON DAMAGES**

COMES NOW the Plaintiff, Kevin D. Miller ("Miller"), *pro se*, and files this Third Motion for Default Judgment Against Asset Partners of Western New York, LLC ("APWNY") pursuant to Federal Rules of Civil Procedure 55(b)(2). Miller requests that this Honorable Court enter a judgment by default against APWNY for the reason that APWNY has failed to plead or otherwise defend in response to Miller's Complaints as provided by the Federal Rules of Civil Procedure. Miller would further request that the Court hold a hearing on damages in this matter. In support of this motion, Miller would show the following:

1. This case was initiated on September 10, 2007, more than fifteen months ago. Since this action was commenced, Miller served a summons and complaint on APWNY on January 7, 2008. (See Docket Nos. 57, 58).
2. Miller has sought default judgment against APWNY in this case twice before, on October 11, 2007 and March 19, 2008. (See Docket Nos. 24, 67, 71). Miller's first motion for default judgment was denied as premature. (See Order dated October 17, 2007 [Docket No. 25]). In denying Miller's second motion, the Court ruled that although APWNY had not filed an

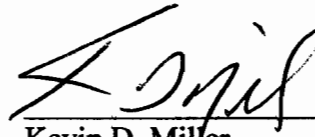
answer, it had otherwise been defending the case. (See Order dated July 22, 2008 [Docket No. 97]).

3. Later, however, in response to Miller's "Motion for an Order Directing Account Management Services, LLC to Obtain Counsel Instantly" (Docket No. 119), Magistrate Judge Cosbey acknowledged that APWNY has not appeared or otherwise defended against Miller's cause of action. (See Order dated September 25, 2008 [Docket No. 134], fn. 1). Accordingly, per Miller's request, the Court ordered APWNY to file an answer signed by counsel no later than October 14, 2008. The Court warned APWNY that failure to comply with its Order "may result in the entry of a default and entry of a default judgment." (Order dated September 25, 2008 [Docket No. 134] at 2.)
4. Despite being forewarned, APWNY has remained unresponsive. To date, APWNY has failed to obtain counsel, file an appearance, plead, or otherwise defend against the claims asserted in this action.
5. Contemporaneously with this motion, Miller has filed with the Clerk's Office a Request for Entry of Default against APWNY in accordance with Federal Rule of Civil Procedure 55(a).

WHEREFORE, Miller requests that this Honorable Court enter a judgment by default against APWNY for failing to file a responsive pleading or otherwise defend in this matter, and that the Court schedule a hearing on damages in this matter.

This 30th day of January, 2009.

Respectfully Submitted,



Kevin D. Miller
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CERTIFICATION

I certify that on January 30, 2009, a copy of this *Third Motion for Default Judgment Against Asset Partners of Western New York, LLC (formerly Account Management Services, LLC) and Request for Hearing on Damages* was served by United States Mail, postage pre-paid upon the following:

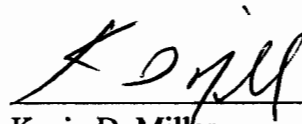
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